

Pskovskaya Poshlina (Pskov Duty): Common Law in the Administrative and Judicial System of the Republic of Pskov.

The Pskov Judicial Charter which was created throughout XIII-XV centuries had incorporated different forms of law; and the legal regulations of common (custom) law are the ones that are special and their origin is difficult to define. One of the most evident qualities of the common law is its direct link with state institutions, formed at early stages of the development of statehood. The assembly of the city of Pskov (or the *veche*) is an example of such state institutions. It is said in the introductory clause of the Pskov Judicial Charter that the charter “was copied out” “from various other additions on Pskov customs [...] at the city assembly” (“*vypysana*” [...] “*izo vseh pripiskov pskovskih poshlin ...na veche*”). Undoubtedly, this fact proves that the legal regulations of common law were included in the text of this document. The purpose of this report is to expose these cases and to define the role of the legal regulations of common law in the state-legal system of Pskov.

One of the most ancient legal regulations of common law is found in Clause 3 of the Pskov Judicial Charter, which is devoted to the prerogatives of a mayor. A mayor was to swear and promise: “and he must swear that neither at court at a city assembly will he condemn some man without an appropriate investigation” (“*bez ispravi cheloveka ne pogubiti na sudu na veche*”). It implies that he promised not to pronounce a sentence at the city assembly without giving a guilty person a chance to justify himself. In Clause 4 this archaic form of conducting court at the *veche* is abolished: “And the prince and mayor do not conduct court at the city assembly” (“*a knyaz’ y posadnik na veche sudu ne sudyat*”). Regardless of the exact period when this legal regulation was abolished, it is evident that its roots are in the practice and traditions of public meetings of pre-state and early state epoch. During the periods of intensive social struggle, as, for instance, it happened in 1484–1486, when the *veche* gathered near the market place and acted on behalf of the whole city, the court at the *veche* was reinstated and in accordance with the resolution of the *veche* a mayor was executed in 1484.

Besides the *veche* there was an archaic institution of “*bratshchina*” in Pskov (as well as in other mediaeval cities). “*Bratshchina*” was a type of community which united neighbours or people according to their trade or occupation and organized joint feasts on holidays. Such feasts were a ritual gathering; the order was supervised by the head of the feast. He was elected for a short period of time by the “drinking people” – the guests of the feast. The role of the head of the feast was more crucial than the duties of the master of ceremonies. In special cases “*bratshchina*” with its head could substitute the court: “A fraternal organization may conduct a trial just like a judge” (Clause 113). (“*A bratshchina sudit kak*

sud'y"). It was possible to declare ("yavlyat") a case of theft to the head of the feast, just as one could do it to neighbours or to other outsiders (Clause 34).

The traditions and regulations in the sphere of inheritance law were archaic too; the volume of legal regulations of common law was especially great. The terminology of the Pskov Judicial Charter contains vivid traces of the notions of tribal epoch, the most significant of which is the expression "close kinship" ("blizhneye plemya"). Close kinship are relatives of the second degree of affinity who, nevertheless, acquired rights on the personal assets of the deceased if there were no immediate relatives and documents that could title to it. The trustee of the testator – "prikaznik" didn't have such extensive rights, and to confirm this right he was to show written documents to the court. This legal regulation of common law was not abolished and remained in the last version of the Charter (Clause 15).

The legal regulations of common law can be found out also by comparing legal regulations of the Pskov Judicial Charter and Novgorod writings (charters) on birch bark of the XI–XIV centuries. If one can prove the identity of these regulations, therefore it will imply that the sources of Novgorod and Pskov Law were common and quite ancient. The problem of correlation of early law regulations taken from writings (charters) on birch bark and late law regulations taken from the Pskov Judicial Charter was first put forth by L. V. Cherepnyn, who compared these sources in a systematic way and summarized the results of this comparative analysis: "legal regulations which existed in Pskov and Novgorod were quite close, and this similarity gives an opportunity to use Novgorod writings (charters) on birch bark for more detailed commentaries on the Pskov Judicial Charter, and on the basis of the latter one can understand certain writings (charters) on birch bark"¹.

The most ancient legal institution reflected in the writings (charters) is a bail ("poruka"), described in Clauses 32 and 33 of the Pskov Judicial Charter: "If some man will serve as guarantor for another in a loan, and that man [the creditor] initiates a suit for his money against the man whom he guaranteed, and the litigant for whom the bond was given, taking a document against his opponent, says, "Brother, I paid you that money for your bond, and I have a document [confirming the repayment]." So he [the creditor] is not to initiate a suit against the litigant nor against the guarantor. But that document is not acceptable proof if a copy in those same words is not found in the Pskov archives [in the Holy Trinity Cathedral], and the complainant [creditor] is free to seek his money from the guarantor who gave his warranty [lit., his hand] for the borrower. And loans of up to one ruble may be guaranteed by bond, but for loans of more than one ruble. ("A kotoroi chelovek poruchitsya za druga v serebre, a imet tot chelovek sochit' na poruchnike svoego serebra, y tot istets, po kom ruka dana vymyet protiv svoego istsa ryadnitsu, a molvit tak: az brate tobe zaplatyl to srebro za toyu rukoyu, a ou mene y ryadnitsa

¹ L. V. Cherepnyn *Novgorodskye berestyanye gramoty kak istorichesky istochnik*. – Moscow, 1969.

shto emu ne sochit' istsu na istse togo serebra, ni na poruchniki, ino taya poryadnya povinit', azhe v lary ne budet v tyzh rechi, a istsu znaty poruchnika v svoem serebre, po kom ruku dal. A poruke byt' do rublya, a bolshi ne byti rublya.²) "Poruka" is a specific phenomenon of Russian Medieval Law, the remains of which in criminal procedure can be traced to XVI century. Bail in privity is known from the Treaty of Smolensk in 1229, and Y.G. Alekseev supposes that the origin of this institution "dates back to the first decades of XIII"³. L.V. Cherepnyn inquired into the institution of bail using the charter of XIV century⁴.

A guarantee was mentioned in Novgorod writings (charters) on birch bark for the first time in a document of the 60–70ies of the XII century. This document was written by someone called Sudisha: "Vot Zhadko poslal dvuh yabetnikov, y oni ograbili menya za bratny dolg. A ya ne poruchnik (za brata) pered Zhadkom"⁵. The most informative document for researching a bail in civil cases is Charter № 531, which dates back to the verge of the XII–XIII centuries; it is the largest of the known writings (charters) on birch bark. A detailed investigation was carried on by A.V. Artsyhovskiy and V. L. Yanin⁶. The charter is a private letter written by a woman named Anna, who was accused of illegal enrichment. A Constantine lent money on interest to Anna's son-in-law whose name was not mentioned. While this son-in-law was absent, Anna's daughter lent money on interest herself, and though Anna didn't vouch for her, Constantine accused them of collusion and called them "a cow" and "a whore".

Constantine called the accused people to the church where they had to be summonsed. It corresponded to the procedure described in the Pskov Judicial Charter: "If a bailiff goes to summon a litigant to court, and the person summoned does not come to the church in the local district for the reading of the summons, or if he hides himself to avoid the summons, then the bailiff is to read the summons in the local district center before the priest of that church"⁷. ("A kotoroy pozovnik poidet istsa zvati na sud, y toi pozvany ne poidet na pogost k tserkvi pozyvnitsy chesty, ili stulitsa ot pozyvnitsy, ino pozyvnitsa prochesti na pogoste pred popom...") The letter begins with the request of Anna to "popechalovatsya o moyem oroudye Kosnyatinou"⁸. "Oroudye" mentioned in this quotation in the Pskov Judicial Charter is a legal case, as it is explained in Clause 6: "And whatever mayor steps down from his post must himself complete all the litigation initiated

² Y. G. Alekseev *Pskovskaya sudnaya gramota: Text. Kommentary. Issledovanye*. – Pskov, 1997. – P.40.

³ Y. G. Alekseev *Pskovskaya sudnaya gramota y eyo vremya*. – Leningrad, 1980. – P. 83.

⁴ L. V. Cherepnyn *Novgorodskye berestyanye gramoty kak istorichesky istochnik*. – Moscow, 1969. – P. 355-356.

⁵ A.A. Zalyznyak *Drevnenovgorodsky dialect*. – Moscow, 1995. – P. 308.

⁶ A.V. Artsyhovskiy, V. L. Yanin *Novgorodskye gramoty na bereste (Iz raskopok 1962-1976)*. – Moscow, 1978. – P. 132-133.

⁷ Y. G. Alekseev *Pskovskaya sudnaya gramota: Text. Kommentary. Issledovanye*. – Pskov, 1997. – P.39.

⁸ A.V. Artsyhovskiy, V. L. Yanin *Novgorodskye gramoty na bereste (Iz raskopok 1962-1976)*. – Moscow, 1978. – P. 131.

during his term⁹”. These correspondences are indicative of ancient legal regulations reflected in the Pskov Judicial Charter, and the institution of “poruka” (bail) has its roots in “poshlina” (duty), they are legal regulations of common (custom) law characteristic of Novgorod and Pskov at least since XII century.

If in Charter № 513 “poruka” (bail) was assumed by the plaintiff, then in Charter № 510 poruka is a real fact. It supposed by the publishers that the charter is the initial part of the minutes of a trial: “Se stal Kouzma na Zdylou y na Domazhirovitza. Torgovala esta selom bez menya. A ya za to selo poruchnik. Y rozvely est’ chelyad’, y skotynou, y kobyl, y rozh’. A Domazhir pobegl, ne otkupiv (selo) u Vyachslava iz dolgoy...”¹⁰. It is evident that Domazhir, the owner of the settlement, is a debtor of Vyacheslav, and Kuz’ma is a guarantee for his debts. Having found out that Domazhir had closed the deal of selling the settlement to Zdylu, Kuz’ma sued. Domazhir might have mortgaged this settlement to Kuz’ma, and the latter wanted to preserve his property interest with the help of the trial. “Poruka” is mentioned in late Novgorod writings (charters) on birch bark of the XIV century: “Chto Oleksa Kolbinets dal poruku v kunah, chtoby dat’ kuny na Petrov den...”¹¹, and then it is presented in the Pskov Judicial Charter in a modified way.

The second legal regulation, which has its origin in ancient times, is so-called “kormlya”: the usage of somebody’s immovable property without having rights to sell it. Y. G. Alekseev supposes that “the institution of kormlya is a new social phenomenon that testifies the development of a new right of land property and it differed dramatically from the old patriarchal right based on custom which continued to exist and predominate among peasants”¹². Novgorod writing (charter) on birch bark № 227, dating back to the 60–70ies of the XII century, does not contain this term “kormlya”, but L. V. Cherepnyn was the one who compared it to this charter of the middle XV century, in which the testator Andey Ivanovich ordered his son-in-law Gerasim to “kormity do muzha” his son and daughters¹³. The charter on birch bark is very difficult for analysis because it has remained in fragments and gives an example of a private letter in which exact terminology was not used. The author of the letter orders his mother to “sedety” on the land together with David’s wife, but nevertheless, he admonished her against thinking that she could be “pyushchey-yedyashchey” (could drink and eat) from this land. If she “voz’myot sud”, then according to the decision of the court she would be able to “sedyashchy, chest’ imat’, pyushchy-yedyashchy s Davydivoi zhenoi”. A. A. Zalyznyak believes that the expression “pyt’- est’” may just as well mean

⁹ Y. G. Alekseev *Pskovskaya sudnaya gramota: Text. Kommentary. Issledovaniye*. – Pskov, 1997. – P.37.

¹⁰ A.V. Artsykhovskiy, V. L. Yanin *Novgorodskyye gramoty na bereste (Iz raskopok 1962-1976)*. – Moscow, 1978. – P. 107.

¹¹ A.A. Zalyznyak *Drevnenovgorodskiy dialect*. – Moscow, 1995. – P. 443.

¹² Y. G. Alekseev *Pskovskaya sudnaya gramota y eyo vremya*. – Leningrad, 1980. – P. 102.

¹³ *Gramoty Velokogo Novgoroda y Pskova*. – Moscow, Leningrad, 1949. - # 156. – P. 203. L. V. Cherepnyn *Novgorodskyye berestyanye gramoty kak istoricheskiy istochnik*. – Moscow, 1969. – P. 98.

“kormit’sya¹⁴” (“to live on something”). In this case, we have the ancient evidence of the origin of the institution of “kormlya” – to provide immediate and distant relatives with profits received from land “do ih zhivota” (while they are alive) without having rights to sell it.

One more institution is mentioned in Charter № 141 dating back to the 60–70ies of the XIII century, and this institution of “sblyudenyie” (keeping other people’s possessions for fees) is well-known from the Pskov Judicial Charter. “Ou Sidora, ou Tadouya, ou Ladopguy polozhile Grishka s Costoyu a vo tabolaho. A Grishki kozhyuhe, svita, sorotsitsa, shyapka. A Costina svita, sorotsitsa. A toboli Costini, a sopoguy Costini, a drouguy Grishki. A tsto sya podite na Movozery, prislavshy v’zmete”¹⁵. L. V. Cherepnyn compared the text of this charter on birch bark with Clauses 16, 17 and 19 of the Pskov Judicial Charter; the reasons for giving one’s own possessions for keeping (“na zblyudenyie”) are evident from these clauses (one of them is leaving for “chuzhaya zemlya”). A person who had not made a list of the possessions left for keeping was not allowed to retrieve them: “If someone begins to seek stored goods according to an uncertified document which bears no list of goods, then that suit is to be disallowed”. (“A kto imet iskaty zblyudenyia po doskam bezimeno, starine, ino tot ne doiskalsya”¹⁶.) That is why Grisha and Costa had made a list of stored goods to have a legal right to retrieve their possessions (“iz zblyudenyia”)¹⁷.

One more legal regulation of the Pskov Judicial Charter dates back to the ancient times, and it is an oral bargain, concluded “smolve”. “If someone begins a suit against another on the basis of uncertified notes, or on the basis of collateral, but at the trial or even at the kissing of the cross he reaches a settlement and takes from his opposite only a little of a large sum at issue, then there is no fine for that, if he drops the entire suit before the kissing of the cross”. (“A kto na kom imet chego iskaty po doskam, ili po zakladom, a smolve ou svoego istsa vozmet ot mnogo malo po sudu, y chtoby ou kresta, ino v tom peni net, chtoby y darom otpustyl svoego istsa bez tselovanya”¹⁸. L. V. Cherepnyn compared Clause 62 of the Pskov Judicial Charter to Charter on birch bark № 344, dating back to the verge of XIII–XIV centuries: “Oto Petra ko Kouzme. Yazo tobe bratou svoemu prikazale pro sebe tako: ouryadilo li sya s toboyu, tsy li ne ouryadilosya ty, ti so Drotsiloyu po somolove pravi, a yazo sya klaneyu”¹⁹. When analyzing and commenting on the Charter L. V. Cherepnyn based his assumptions on the first

¹⁴ A. A. Zalyznyak *Drevnenovgorodsky dialect*. – Moscow, 1995. – P. 309-310.

¹⁵ A. A. Zalyznyak *Drevnenovgorodsky dialect*. – Moscow, 1995. – P. 404.

¹⁶ Y. G. Alekseev *Pskovskaya sudnaya gramota: Text. Kommentary. Issledovanye*. – Pskov, 1997. – P. 38.

¹⁷ L. V. Cherepnyn *Novgorodskye berestyanye gramoty kak istorichesky istochnik*. – Moscow, 1969. – P. 361-362.

¹⁸ Y. G. Alekseev *Pskovskaya sudnaya gramota: Text. Kommentary. Issledovanye*. – Pskov, 1997. – P. 43.

¹⁹ L. V. Cherepnyn *Novgorodskye berestyanye gramoty kak istorichesky istochnik*. – Moscow, 1969. – P. 346-347; A. A. Zalyznyak *Drevnenovgorodsky dialect*. – Moscow, 1995. – P. 432.

variant of interpretation and reading of its text, according to which the last phrase of the Charter was read as “so Drotsiloyu n’ somolove”. Consequently, the researcher came to the conclusion that the author of the charter Petr ordered Kuz’ma not to solve the problem with the help of a bargain. The new variant of interpretation, given by A.A. Zalyznyak, implies new shades of meaning and the other contents of the text: Kuz’ma was ordered to conclude a bargain and act in accordance with it. It means that oral bargains were used at the beginning of the XIV century and, probably, later on; the fact is reflected in the text of the Pskov Judicial Charter.

There exists Charter № 137, dating back to the 10–30ies of the XIV century, it has remained in fragments: “na sud y ne sta Philipets...poslahom gramoty besudnyu... polo dzhi im pozhneyu po...”²⁰. The contents of the charter was commented on correctly by A.V. Artsyhovskiy, who pointed out that it is an example of a “bessudnoy” charter (default judgment charter) given out to a plaintiff who wins the trial because the other plaintiff does not stand trial²¹. Clause 50 of the Pskov Judicial Charter gives a plaintiff a right to have such a charter written “inde”, i.e. privately, by a square clerk if he cannot pay for the drawing up of this charter by a prince. L.V. Cherepnyn made a supposition that Charter № 137 is a “bessudnaya” charter drawn up by a clerk and therefore, it does not have a seal²².

The origin of such institutions as “kormlya”, “poruka”, “zblyudenyaya”, oral bargains and private drawing up of “bessudnoy” charters (default judgment charters) from the end of the XII – the beginning of the XIII centuries makes it possible to draw two conclusions. Firstly, the Pskov Judicial Charter is based on legal regulations of common (custom) law of the ancient times, of which there are no evidences and documents left. Secondly, if in the charters (writings) on birch bark of the XII–XIII centuries the terminology and the law institutions of the Pskov Judicial Charter were mentioned, then consequently, there exists a unity of legal regulations in Novgorod and Pskov in XII–XIII centuries. Whether this unity can be explained by earlier common sources, or it proves the coexistence of two cities within one integrated state, this problem can be a subject of specific and detailed consideration.

²⁰ A. A. Zalyznyak *Drevnenovgorodskiy dialect*. – Moscow, 1995. – P. 470.

²¹ A.V. Artsyhovskiy, V. I. Borkovskiy *Novgorodskiy gramoty na bereste (Iz raskopok 1955)*. – Moscow, 1958. – P. 10-11.

²² Y. G. Alekseev *Pskovskaya sudnaya gramota: Text. Kommentary. Issledovaniye*. – Pskov, 1997. – P. 41;
L. V. Cherepnyn *Novgorodskiy berestyanyye gramoty kak istoricheskiy istochnik*. – Moscow, 1969. – P. 344.